

APPEAL NO. 020435
FILED APRIL 1, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 23, 2002. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____, and that the respondent (carrier) is relieved from liability under Section 409.002 because the claimant failed to timely notify the employer of his injury under Section 409.001. The claimant has appealed, arguing that the hearing officer erred in these determinations. The carrier filed a response, urging affirmance.

DECISION

Affirmed.

The claimant, who had two prior back injuries in 1974 and 1992, testified that on _____, he injured his low back and neck when he was installing a 500-pound door at a job site. He explained that he was in a squatted position when the door slipped from his hands and pinned his head and neck against the floor. The claimant further testified that he completed his job duties on _____; that he reported the injury to his supervisor that same day; that he sought medical attention that same day; and that he was released for light duty with restrictions on April 18, 2001. The employer testified that the claimant constantly complained of back problems prior to _____; that the claimant did not report a work-related injury on _____; that the claimant was released to light duty with restrictions on April 18, 2001; that he was taken off work on June 26, 2001; and, that the employer became aware of the claimed incident after July 26, 2001. A medical report dated April 25, 2001, states that the claimant has "possible radiculopathy and degenerative disc disease of low back," and a medical report dated May 21, 2001, states that "[c]learly, he does have very significant degenerative disc disease in the neck and low back area with the MRI showing multiple bulges." An operative report dated July 26, 2001, shows that the claimant had neck surgery. The evidence shows that the Employee's Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41) was filed on October 18, 2001.

The hearing officer did not err in determining that the claimant did not sustain a compensable injury on _____. The evidence was in conflict as to whether he sustained a new injury. An employee has the burden of proving, by a preponderance of the evidence, that he or she sustained a compensable injury. Texas Workers' Compensation Commission Appeal No. 94248, decided April 12, 1994. The hearing officer was not persuaded by the claimant's testimony or the medical reports in evidence introduced by the claimant purporting to show that he sustained a compensable injury on _____. It is the hearing officer, as the sole judge of the weight and credibility of the evidence (Section 410.165(a)), who resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v.

Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ).

Similarly, the hearing officer did not err in determining that the claimant did not timely report to the employer that he sustained a work-related injury and that he did not have good cause for such failure. The evidence was in conflict on this issue. Nothing in our review of the record indicates that the challenged determinations are so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to disturb those determinations on appeal. Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **SENTRY INSURANCE, A MUTUAL COMPANY**, and the name and address of its registered agent for service of process is

**GAIL L. ESTES
1525 NORTH INTERSTATE 35E
SUITE 220
CARROLLTON, TEXAS 75006.**

Philip F. O'Neill
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Terri Kay Oliver
Appeals Judge